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ABSTRACT

This memorandum addresses the responsibility of State Education Agencies (SEAs) for insuring that local educational agencies do not violate students' civil rights. The SEA's duty is said to arise from two sources. First, in most if not all States, State law mandates that State education officials supervise and regulate the conduct of local school districts. This responsibility includes civil rights issues. Second, without reference to State laws, Federal obligations compel SEA's to assume civil rights enforcement responsibilities. Furthermore, this responsibility is an affirmative one. The SEA cannot wait for complaints to be brought, but must monitor and require correction as necessary. (The responsibilities under the laws of each State in the Miami Lau Center's service area are discussed separately. These States are Alabama, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.) (CMG)

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TO: Clients and Colleagues
FROM: Rosa Castro Feinberg, Director
RE: State Education Agency Civil Rights Responsibilities

TO THE EDUCATIONAL RESOURCES
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The Center has received numerous requests for clarification of the duties and responsibilities of State Education Agencies (SEA) for insuring that local school agencies do not infringe upon the civil and constitutional rights of their students. Our concern is, of course, primarily related to the difficulties that national origin minority students encounter, including problems of admission, sometimes related to English language proficiency or immigrant status, and to the provision of appropriate educational opportunity to overcome language barriers. We have requested our legal consultant, Peter M. Siegel, Esq., to prepare this memorandum on SEA responsibility. In his opinion, SEAs have a clear responsibility for civil rights enforcement. His report follows:

I. INTRODUCTION: State educational agencies have an unequivocal responsibility to insure that local school agencies do not violate the civil and constitutional rights of their students. Most, if not all states, in their state constitutions and laws, ban discrimination based upon race, color or national origin. Some include other factors, such as sex or handicap. At the federal level, the Fourteenth Amendment to the Constitution prohibits a state from depriving "any person of life, liberty or property, without due process of law . . ." or denying to them "the equal protection of the law." To enforce the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 mandates that "no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination" Title VI, and its implementing regulations, resulted in the Lau decision [Lau v. Nichols, 414 U.S. 563(1974)] requiring school districts to overcome the English language deficiency of their national origin minority students.

The Equal Educational Opportunity Act (20 U.S.C. §§1400 et seq.) mandates special efforts to overcome barriers to education, including language barriers.

The Constitution and laws, both federal and state, define the constitutional and civil rights of the students. This memorandum does not address the scope of those rights. Rather, it addresses the responsibility of the SEA to insure that local educational agencies do not violate existing rights. The state agency duty

arises from two sources. First, in most if not all states, state law mandates that state education officials supervise and regulate the conduct of local school districts. This responsibility includes civil rights issues. Second, without respect to state laws, federal obligations compel state education agencies to assume civil rights enforcement responsibilities.

The responsibility is an affirmative one. The SEA has a duty to monitor the performance of local agencies,^{1/} and when their performance is deficient, to act in such a way as to require the local agency to remedy the deficiency. School officials who violate the civil rights of students, and SEA officials who fail to act to prevent violations by local educational officials, can be held personally liable for money damages. The Supreme Court has held that school officials who know, or should know, that they are violating a student's constitutional rights, are personally liable. Wood v. Strickland, 420 U.S. 308, 43 L. Ed.2d 214 (1975). Thus, for example, both local board members who ban undocumented aliens, and SEA officials who do not act to force the local board to change its policy, could be subject to monetary damages awarded in favor of the excluded alien child.^{2/}

The responsibilities of all SEAs, as a matter of federal law, will be discussed in Section II of this memorandum. The responsibilities of SEAs in the Miami Lau Center's service area will be discussed seriatim in Section III.

II. RESPONSIBILITY UNDER FEDERAL LAW: Federal law applies alike to all states. Whether state law requires the SEA to enforce civil rights compliance is not relevant if federal law so requires. The federal law is supreme and federal law does require all SEAs to be responsible for civil rights compliance by local school districts.

Title VI of the Civil Rights Act (42 U.S.C. §2000d) and the Equal Educational Opportunities Act (20 U.S.C. §§1701 et seq.), both prohibit discrimination based on race, color, sex and national origin, including language barriers, and both place responsibility upon the SEA to prevent violations. The requirements placed on the SEA pursuant to the Education of the Handicapped Act, Public Law 94-142 (20 U.S.C. §§1400 et seq.) are similar.

The nature of an SEA's enforcement responsibility can be seen, for example, in the actions of the New Jersey State Commissioner of Education. Beginning with the case of Booker v. Board of Education, Plainfield, 45 N.J. 161, 212 A.2d 1 (1965) where the Commissioner compelled a local school district to eliminate defacto segregation, the SEA has demonstrated its affirmative power to remedy civil rights violations at the local level. New Jersey law bans discrimination in the admission to, or in obtaining any advantages, privileges or courses of study by reason of race, color, creed, sex or national origin (N.J.S.A. 18A: 36-20). It provides the Commissioner with an affirmative duty to intervene at the local level as necessary. Hintey v. Matawan Regional Bd. of Ed., 77 N.J. 514, 391 A.2d 899 (1978).

^{1/} The SEA has a duty to accept complaints from individuals, investigate and act accordingly.

^{2/} The right of undocumented aliens to attend school was established in Doe v. Plyler, U.S. Supreme Court, June 15, 1982. After that date, exclusion constitutes a constitutional violation.

The SEA can compel local districts to create and implement plans for racial balance, Piscataway Tp. Bd. of Ed. v. Burke, 158 N.J. Super. 436, 386 A.2d 439 (App. Div. 1978). If the SEA determines that a local school district is not providing a thorough and efficient education, it has the power to issue an administrative order specifying a remedial plan to the local board of education. The plan may include budgetary changes and other measures that the SEA determines to be appropriate. This power encompasses orders dealing with affirmative action, bilingual education, and special and compensatory education. Matter of Board of City of Trenton, 176 N.J. Super. 553, 424 A.2d 435 (App. Div. 1980), aff'd., 86 N.J. 327, 431 A.2d 808 (Sup. Ct. 1981).

The New York SEA, possessing statutory authority similar to that of the New Jersey SEA, has also acted upon its affirmative duty to insure civil rights compliance at the local level. For example, the Commissioner of Education can order local districts to desegregate. The statutory enforcement power includes removal of local officials and withholding of funds, Arthur v. Nyquist, 573 F.2d 134 (2d Cir. 1978). The SEA is responsible for insuring that local districts meet their statutory duties. Forrest v. Ambach, 436 N.Y.S. 2d 119 (Sup. Ct. 1980). The State Commissioner of Education has the power to, and does, supervise and control local school districts as he deems appropriate. See James v. Board of Education of City of New York, 42 N.Y.2d 357, 366 N.E.2d 1291 (1977).

The powers which the Commissioners of Education in New Jersey and New York possess and implement are not different from the powers conferred upon the SEAs in other states by state law or by federal mandate.

The courts have held that the enforcement mandates of the various laws mean what they say. The SEA is responsible. For example, in Debra P. v. Turlington, 644 F.2d 397 (5th Cir. 1981), under the Equal Educational Opportunities Act, the SEA was held responsible for taking affirmative steps to remove the vestiges of discrimination. As a result, the state could neither impose, nor permit, a testing scheme that unfairly impacted upon minority students. Using Title VI of the Civil Rights Act of 1964, another court found SEA responsibility to remedy discriminatory acts by local officials, Larry P. v. Riles, 495 F.Supp. 926 (N.D. Ca. 1979).

The federal mandate overrides any contrary state law. For example, although Florida law may delegate all responsibility for student discipline and conduct to local officials, because the Education for all Handicapped Children Act requires SEA supervision and control, local decisions must yield to SEA policies and procedures. S-1 v. Turlington, 633 F.2d 342 (5th Cir. 1981).

Other courts have reached the same conclusion. In United States v. School Dist. of Ferndale, 577 F.2d 1339 (6th Cir. 1978) the SEA was held responsible for local discriminatory actions because of the state funding provided. Other cases which make clear the responsibility of the SEA include Georgia Ass'n of Retarded Citizens v. McDaniel, 511 F.Supp. 1263 (M.D. Ga. 1981); Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981); Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9th Cir. 1981). No court has held the SEA not responsible.

It is clear that, as a matter of federal law, every SEA must take responsibility for insuring civil rights compliance by local school officials. It is an affirmative duty not satisfied by sitting back and waiting for complaints. Rather the SEA has a duty to monitor and require correction as necessary.

III. RESPONSIBILITY UNDER STATE LAW: Each state in the region has its own constitution, laws and regulations. They serve to define the power of the SEA. Variations exist. Nevertheless, in all states the SEA has a supervisory responsibility over local education officials. Each state within the Miami Lau Center's service area will be discussed below.

A. Alabama: The Constitution of the State of Alabama grants the State Board of Education general supervision of the public schools. Constitution, Amendment 284. The State Superintendent, who is appointed by the State Board of Education, serves as the chief school officer and exercises general control and supervision over the public schools. Code of Alabama §16-3-11. The State Superintendent is authorized to review the actions of local school districts. Code of Alabama §16-4-8 provides:

The state superintendent of education, under rules and regulations promulgated by the state board of education, shall have the authority to review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools in matters relating to finance and other matters seriously affecting the educational interest. Upon such review the state superintendent of education shall have the power to determine from the facts the just and proper disposition of the matter. The order of the state superintendent shall be binding.

The range of responsibilities of the state officials has been well described in Lee v. Macon County Board of Education, 267 F.Supp. 458 (M.D. Ala. 1967), aff'd, Wallace v. United States, 389 U.S. 215 (1967). The court described those responsibilities as follows: (footnotes omitted).

It is considered appropriate to restate the general scope of the control and authority of these defendant officials over the public schools in Alabama. As noted earlier, the defendant officials have extensive powers over this public school system. Section 262 of the Alabama Constitution provides that "The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties * * * shall be fixed by law." The State Board of Education has similar duties: "[the Board] shall exercise, through the state superintendent of education and his professional assistants, general control and supervision over the public schools of the state * * *." Title 52, §14, Code of Alabama. The Legislature has also provided that "The state superintendent of education shall execute the educational policy of the state board of education." . . . The Legislature has also provided that "The state superintendent of education shall execute the educational policy of the state board of education." Title 52, §45, Code of Alabama.

The State Board is expressly authorized to adopt rules and regulations governing school construction, school sanitation and physical examination of school children, and must enforce all rules relating "to school health, compulsory education, and child conservation." Title 52 §15, Code of Alabama. It controls the grading and standardizing of public schools, the minimum contents of courses of study, and the training and certification of teachers. The State Board of Education is further charged with the duty of "equalizing the public school facilities throughout the state" and administers a fund for that purpose. Title 52, §33, Code of Alabama. The State Board and the State Superintendent together exercise a broad power of review of actions of local school boards and local superintendents in "matters relating to finance and other matters seriously affecting the educational interest." Title 52, §§34 and 47, Code of Alabama.

The Board also has broad powers to effectuate and supplement other powers previously expressly conferred. Title 52, §31, Code of Alabama.

In light of these responsibilities the Alabama Supreme Court has noted that absent legislation conferring a specific responsibility upon local boards, the state board's general control and supervision responsibility applies. Opinion of the Justices, 160 So.2d 648 (1964); Mobile, Ala - Pensacola, Fla Bldg. & C.T.C. v. Williams, 331 So.2d 647 (1976). Since no statute limits civil rights issues to local boards, the state board, acting through the state superintendent, must insure that the civil rights of Alabama national origin minority students are not infringed.

B. DELAWARE: Ultimate legal control of the educational process is in the hands of the state, Morris v. Board of Education, 401 F.Supp. 188 (D. Del. 1975). The State Board of Education has general policy making power and adapts rules and regulations binding on local districts. 14 Del.C.A. §§121, 122. Steiner v. Simmons, 111 A.2d 574 (Del. Super. 1955). State Board regulations have the force of law. Sammons v. Ridgeway, 293 A.2d 547 (Del. Supr. 1972). Delaware thus has what can best be described as strong, centralized control of education. The SEA control authorizes the SEA to insure that the civil rights of the State's national origin minority students are not violated by local school officials.

C. DISTRICT OF COLUMBIA: In Washington, the entire school system constitutes one district. Hobson v. Hansen, 269 F.Supp. 401 (D.D.C.), aff'd, Smuck v. Hansen, 408 F.2d 175 (D.C. Cir. 1969). There is no bifurcation of responsibility and no issue with respect to duty.

D. FLORIDA: Florida's State Board of Education and State Commissioner of Education have limited powers. Neither the state constitution, nor state legislation, confers a general power of supervision and control. Rather, the power of state officials must be specifically authorized by law. Canny v. Board of Public Instruction of Alachua County, 222 So.2d 803 (1st D.C.A. 1969). For example, because state law entrusts local school districts with the responsibility for student conduct and discipline, it has been held that the state officials have no role to play, even

in the face of a claim of racially discriminatory student discipline levelled against the local board, Sweet v. Childs, 507 F.2d 675 (5th Cir. 1975).

Thus, in Florida we must look to the specifics of the alleged civil rights violation to determine SEA responsibility. Civil rights violations that arise as a result of curriculum offerings, limitations on course availability, special education, bilingual education, and other issues of access, such as school admission, are all within the SEA's sphere of supervision. For example, Florida Statutes 229.011 (1981) provides:

Public education is basically a function and responsibility of the state. The responsibility for establishing such minimum standards and regulations as shall tend to assure efficient operation of all schools and adequate educational opportunities for all children is retained by the state.

Florida Statutes 229.053(2)(1) provides:

All rules and regulations and minimum standards adopted or provided by the state board in carrying out the provisions of the school code shall, if not in conflict therewith, have the full force and effect of law.

These statutes, and others, charge the SEA with providing adequate educational opportunities for all children. Scavella v. School Board of Dade County, 363 So.2d 1095 (Fla. Sup. Ct. 1978). A violation of a national origin minority student's civil rights constitutes a failure to provide adequate educational opportunity. In such a situation, the SEA must step in to remedy the situation.

E. GEORGIA: The State Board of Education has general supervisory power over public school education. Included is the power to enact "rules and regulations prescribing a course of study" and such other "rules and regulations" as may be necessary for the administration of the common school fund." Ga. Code Ann. §32-408. In addition, the State Board must "establish and enforce minimum standards for the operation of all public elementary and secondary schools and local units of school administration in Georgia so as to assure, to the greatest extent possible, equal and adequate education programs, curricular offerings, opportunities and facilities for all Georgia's children and youth." Adequate Program For Education in Georgia Act. 32 Ga. Code Ann. §653(a) and 649 (1974).

Besides the broad grant of authority reflected above, the State Board has the authority to administer the state funds allocated to local schools, 32 Ga. Code Ann. §408, a not inconsiderable power given the scope of state funding. Chatham Assn' of Ed. Teach. U. v. Board of Public Ed., 231 Ga. 80, 204 S.E.2d 138 (1974).

Finally, Georgia, like many other states, permits aggrieved parties to appeal the actions of local school boards to the State Board of Education, 32 Ga. Code Ann. §408. This right of appeal and power of decision in the State Board is broad enough to include claims of civil rights violations. Owen v. Long City Board of Education, 245 Ga. 647, 266 S.E.2d 461 (1980). Thus, the power of the SEA can be invoked by an aggrieved parent, student or other interested party. Or the SEA, in the performance of its supervisory duty, can act without formal complaint or appeal. Thus, state law requires the SEA to protect the rights of Georgia's national origin minority students.

F. KENTUCKY: State control is strong in Kentucky. As early as 1913, Kentucky's highest court said:

Every common school in the state, whether located in a city or rural district, is a state institution, protected, controlled and regulated by the state, and the fact that the state laws appointed agencies such as fiscal agents, school trustees, and municipal bodies to aid it in the collection of taxes for the maintenance of these schools does not deprive them of their state character. Louisville v. Board of Education, 154 Ky 316, 157 S.W. 379 (1913).

The statutory scheme provides that the State Board for Elementary and Secondary Education shall have the management and control of the public schools, shall have the power to adopt rules and regulations necessary to manage and control the schools, shall have the power to remove local officials, and shall have the power to decide all school controversies. Ky. R.S. §§156.070(1), 156.070(4), 156.132 and 156.220. Because of this broad grant of authority, the State Supreme Court has said that "so called home rule" must yield to the state rules and regulations. Gearhart v. Kentucky State Board of Education, 335 S.W.2d 667 (Ct. App. Ky. 1962). The power and responsibility of the SEA to remedy civil rights violations on behalf of its national origin minority students is well established.

G. MARYLAND: Educational matters affecting the state and the general care and supervision of public education are entrusted to the State Board of Education by Maryland Code, Article 77, §2-205. The State Board is authorized to exercise general control and supervision over the public schools and educational interests of the state, to determine educational policies, and to enact bylaws, rules and regulations for the administration of the public school system which shall have the force of law. The State Board is also required to explain the "true intent and meaning of the school law" and shall decide all controversies and disputes that arise under it, with its decision being final.

The totality of the statutory provisions invests the State Board with the last word on any matter concerning educational policy or the administration of the system of public education. Wilson v. Board of Education, 234 Md. 561, 200 A.2d 67 (1964); Resetar v. State Board of Education, 399 A.2d 225 (Ct. App. 1979). The SEA has the power and responsibility to insure that national origin minority students' rights are not violated.

H. MISSISSIPPI: The Mississippi Constitution entrusts the Superintendent of Public Education with general supervision of the public schools. Miss. Const. Art. 8, §202. Mississippi law provides:

The State Board of Education will adopt a course of study to be used in the public schools of the state and it shall regulate all matters arising in the practical administration of the school system, not otherwise provided for. (Miss. Code §37-1-3.)

The power of the state to supervise is beyond question. Board of Education of Prentiss County v. Wilburn, 233 So.2d 665 (Sup. Ct. Miss. 1969). It is an affirmative duty. "Neutrality must be forsaken for an active, affirmative interest in carrying out constitutional commands." Franklin v. Quitman County Board of Education, 288 F.Supp. 509, 519 (N.D. Miss. 1968). The state's affirmative duty compels the conclusion that it must insure that local districts do not infringe the civil rights of their national origin minority students.

I. NORTH CAROLINA: The North Carolina Constitution, Art. IX, Sec. 5 provides:

The State Board of Education shall supervise and administer the free public school system . . . and shall make all needed rules and regulations.

Policies and procedures regarding public education in North Carolina are determined by the State Superintendent of Public Instruction and by the State Board of Education. North Carolina Code §§155 C-12 and 155 C-21. In Kiddie Korner, etc. v. Charlotte-Mecklenburg, 285 S.E.2d 110 (N.C. App. 1981) the court decided local school boards, established on either a county or city-wide basis, are deemed agencies of the state. They operate under the direction of the State Superintendent of Public Instruction and the State Board of Education, and the state officials have an affirmative duty to remedy violations of national origin minority students' civil rights by local school district. Godwin v. Johnston County Board of Education, 301 F.Supp. 1339 (E.D. N.C. 1969).

J. PENNSYLVANIA: The Pennsylvania laws provide the State Department of Public Instruction with broad power to control all school activities. 22 Pa Code §1.2 provides that:

The (State) Board will adopt broad policies and principles and establish standards governing the educational programs of the commonwealth.

The range of powers and responsibilities of the SEA is broad. It can regulate all aspects of education, broadly defined, including issues of discrimination based on race, religion, sex or national origin. In Girard School District v. Pittergen, 392 A.2d 261 (Sup. Ct. Pa. 1978) the SEA could enforce education laws upon local districts. Frederick L. v. Thomas, 419 F.Supp. 960 (E.D. Pa. 1976), aff'd, 557 F.2d 373 (3d Cir 1977). The power of the Pennsylvania State Educational Agency is strong, and is exercised where necessary to protect national origin minority students.

K. SOUTH CAROLINA: South Carolina law provides that:

The State Board of Education shall have the power to:

- (1) Adopt policies, rules and regulations not inconsistent with the laws of the State for its own government and for the government of the free public schools.
- (2) Annually approve budget requests for the institutions, agencies, and services under the control of the Board as prepared by the State Superintendent of Education prior to being submitted to the Budget and Control Board and to the General Assembly.
- (3) Adopt minimum standards for any phase of education as are considered necessary to aid in providing adequate educational opportunities and facilities.
- (4) Prescribe and enforce rules for the examination and certification of teachers.
- (5) Grant State teachers' certificates and revoke them for immoral or unprofessional conduct, or evident unfitness for teaching.
- (6) Prescribe and enforce courses of study for the free public schools.
- (7) Prescribe and enforce the use of textbooks and other instructional materials for the various subjects taught or used in conjunction with the free public schools of the State, both high schools and elementary schools in accordance with the courses of study as prepared and promulgated by the Board.
- (8) Appoint such committees and such members of committees as may be required or as may be desirable to carry out the orderly function of the Board.
- (9) Cooperate fully with the State Superintendent at all times to the end that the State system of public education may constantly be improved.
- (10) Assume such other responsibilities and exercise such other powers and perform such other duties as may be assigned to it by law or as it may find necessary to aid in carrying out the purpose and objectives of the Constitution of the State.

South Carolina Code §59-5-60.

No court has meaningfully dealt with the scope of the power granted to the State Educational Agency. Given that the powers conferred upon the State Board are similar in nature to those existing in most states, there is no reason why the SEA should not have the power to prevent local infringement of national origin minority students' civil rights.

L. TENNESSEE: The State Educational Agency in Tennessee has general supervisory power. T.C.A. §49-105. It also has the power to withhold state funds from local districts that fail to comply with state rules, regulations and minimum standards. T.C.A. §49-613(b). As a result, the State Commissioner of Education and the State Board of Education have the power and the duty to compel local school districts to meet minimum standards, as prescribed by the state. Mitchell v. Crawford, 543 S.W.2d 601 (Ct. App. Tenn. 1976). A local school district that violated a national origin minority student's civil rights would violate the state's minimum standards. The state would have the power and the duty to intervene.

M. VIRGINIA: The relevant provisions of the Virginia Constitution, Article VIII, provide:

§1. Public schools of high quality to be maintained. - The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.

§2. Standard of quality: State and local support of public schools. - Standards of quality for the several school divisions shall be determined and prescribed from time to time by the Board of Education, subject to revision only by the General Assembly.

The General Assembly shall determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality, and shall provide for the apportionment of the cost of such program between the Commonwealth and the local units of government comprising such school divisions. Each unit of local government shall provide its portion of such cost by local taxes or from other available funds.

§5. Powers and duties of the Board of Education. - The powers and duties of the Board of Education shall be as follows:

(a) Subject to such criteria and conditions as the General Assembly may prescribe, the Board shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose.

(b) It shall make annual reports to the Governor and the General Assembly concerning the condition and needs of public education in the Commonwealth, and shall in such report identify any school divisions which have failed to establish and maintain schools meeting the prescribed standards of quality.

(c) It shall certify to the school board of each division a list of qualified persons for the office of division superintendent of schools, one of whom shall be selected to fill the post by the division school board. In the event a division school board fails to select a division superintendent within the time prescribed by law, the Board of Education shall appoint him.

(d) It shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.

(e) Subject to the ultimate authority of the General Assembly, the Board shall have primary responsibility and authority for effectuating the educational policy set forth in this Article, and it shall have such other powers and duties as may be prescribed by law.

§7. School boards. - The supervision of schools in each school division shall be vested in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.

§4. Board of Education. - The general supervision of the public school system shall be vested in a Board of Education of nine members, to be appointed by the Governor, subject to confirmation by the General Assembly

The courts of Virginia have ruled that the State Board can exercise supervision and control over school officers unless the legislature has specifically entrusted a particular item to the local board. School Board of City of Richmond v. Parham, 218 Va. 950, 243 S.E.2d 468 (1978). Virginia laws do not specifically entrust the enforcement of student civil rights to local boards. Therefore, the SEA is authorized to act to prevent civil rights infringement of national origin minority students.

N. WEST VIRGINIA: Relevant West Virginia laws provide as follows:

W. Va. Code §18-2-5:

Subject to and in conformity with the Constitution and laws of this State, the state board of education shall determine the educational policies of the State, except as to the West Virginia University and Potomac state school, and shall make rules for carrying into effect the laws and policies of the State relating to education, including rules relating to the physical welfare of pupils, the education of feeble-minded and physically disabled or crippled children of school age, school attendance, evening and continuation or part-time day schools, school extension work, the classification of schools, the issuing of certificates upon credentials, the distribution and care of free textbooks by the county boards of education, the general powers and duties of county boards of education, and of teachers, principals, supervisors and superintendents, and such other matters pertaining to the public schools of the State as may seem to the state board to be necessary and expedient.

W. Va. Code §18-3-3:

The state superintendent of schools shall have general supervision of the free schools of the State, and shall be the chief executive officer of the state board of education. He shall be charged with the general supervision of all county and city superintendents of free schools and of county and district boards of education within the State, except as provided in article nine, chapter six [§6-9-1 et seq.] of this Code. He shall prescribe the forms and cause to be prepared and printed all blanks necessary for carrying out the details of the school system of the State, and of the rules of the state board of education, so as to secure the uniform operation of the same throughout the State. In respect to general school statistics, such forms and blanks shall conform as nearly as may be to the forms and blanks recommended by the United States Bureau of Education. The state superintendent shall also cause such forms and blanks to be forwarded to all school officers and other persons whose duty or right it is to use them.

W. Va. Code §18-3-4:

The state superintendent of schools shall cause to be instituted such proceedings or processes as may be necessary properly to enforce and give effect to any provision or provisions of this chapter and to the provisions of any other general or special laws pertaining to the school system of the State, or any part thereof, or of any rule or direction of the state board of education made in conformity with its powers and duties. The superintendent shall have authority to administer oaths and to examine under oath, in any part of the State, witnesses in any proceeding pertaining to the public schools, and to cause such examination to be reduced to writing. Witnesses, other than employees of the State, shall be entitled to the same fees as in civil cases in the circuit court. The state superintendent of schools shall have power to institute proper proceedings for the removal of any school official charged with dishonesty, continued neglect of duty, or with failure to comply with the provisions of this chapter or of the rules of the state board of education.

W. Va. Code §18-3-6:

At the request in writing of any citizen, teacher, school official, county or state officer, the state superintendent of schools shall give his interpretation of the meaning of any part of the school law or of the rules of the state board of education.

The determination of educational policy is vested in the State Board of Education. Detch v. Board of Education, 145 W.Va. 722, 117 S.E.2d 138 (1960). It can issue binding regulations. 50 Op. Att'y Gen. 749 (1964). Local boards are subject to extensive state control. Boggs v. Bd. of Ed. of Clay County, 244 S.E.2d 799 (Sup. Ct. W. Va. 1978).

Like South Caronlia, no court has ascertained the parameters of the SEA's power. Its statutory power is broad. It has the authority to prevent violation of civil rights on behalf of its national origin minority students.

Peter Siegel, Esq.